

Calendar No. 1782

86TH CONGRESS
2d Session

SENATE

REPORT
No. 1712

ROBERT L. STOERMER

JUNE 24, 1960.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 9711]

The Committee on the Judiciary, to which was referred the bill (H.R. 9711) for the relief of Robert L. Stoermer, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to waive sections 15 through 20, inclusive, of the Federal Employees' Compensation Act so as to permit Robert L. Stoermer, of Hudgins, Va., to file his claim with the Bureau of Employees' Compensation, Department of Labor, for compensation and disability benefits arising out of an injury to his back alleged to have been sustained by him on May 17, 1951, while employed at Fort Eustis, Va.

STATEMENT

The Department of the Army in its report expresses no view concerning the merits of the bill, on the ground that it is a matter properly within the exclusive jurisdiction of the Secretary of Labor. The Department of Labor in its report opposes enactment of this legislation.

The facts and conclusions surrounding this claim are contained in House Report 1582 on H.R. 9711. It is believed that the statement contained in the House report should be set forth in full, as follows:

On May 7, 1941, Robert L. Stoermer was transferred from the U.S. Maritime Commission, James River Fleet, Lee Hall, Va., to the Quartermaster Corps, Fort Eustis, Va., where he was employed as an "engineer mechanic, helper, CU-6" at a salary of \$1,680 per annum. The Army has reported to this committee that Mr. Stoermer was separated from his employment for physical disability on December 11, 1951.

On September 26, 1946, Mr. Robert L. Stoermer suffered an injury to his back while he was employed as a painter at Fort Eustis. This injury caused him intermittent periods of disability to February 27, 1950, and was diagnosed as a ruptured intervertebral disk. He underwent surgery for a spinal fusion and removal of the ruptured intervertebral disk on November 7, 1949. Mr. Stoermer was able to return to light work on February 27, 1950, and continued in his employment until June 1, 1951, when he was forced to stop work because of his disability. He is now receiving payments of \$34.80 per week, representing 75 percent of his pay at the time of his injury in 1946, and this represents the maximum compensation allowable for the 1946 injury.

However, as is noted in the Army report, Mr. Stoermer sustained a second injury to his back on May 17, 1951, while moving some machinery. The difficulty in connection with this injury was that he did not file an accident report of this injury until July 22, 1955. This bears upon the fixing of compensation in this case, since when he was examined in 1951 at the Norfolk Hospital referred to in the Army report the hospital staff concluded that he was totally and permanently disabled and attributed half of the disability to non-employment osteoarthritis and the other half to residuals of his 1946 injury. As is noted in the report of the Department of Labor, the Bureau of Employees' Compensation rejected his claim that compensation should be based upon his rate of pay in 1951 on the ground that his disability was traceable to the injury he sustained on May 17, 1951. This bill would waive the applicable limitations so as to permit a consideration of a claim based upon that injury.

This committee has carefully considered the circumstances surrounding the delay in Mr. Stoermer's failure to file his claim within the time limited, and has concluded that this is a case which merits the waiver provided for in H.R. 9711. The evidence before this committee establishes that Mr. Stoermer reported his injury on May 17, 1951, promptly to his superiors, the assistant superintendent and superintendent on the job. On June 1, 1951, he conferred with the superintendent again to discuss the matter of compensation with disability benefits. The committee is advised that the claimant is a man of limited education, and it is concluded that he relied heavily upon his superiors to protect his rights as to compensation. He understood that he had to exhaust

his sick and annual leave before he could file the necessary claim papers. On September 6, 1951, the superintendent notified him to come to Fort Eustis to sign the necessary papers, and he was then assured that the proper steps would be taken to see that the compensation would be properly computed. He also understood from the personnel officer at Fort Eustis that he was entitled to disability compensation based on the rate of pay he was receiving at the time of his last injury. This committee has been advised that the superintendent died a few days after talking with Mr. Stoermer in September of 1951, and apparently nothing further was done about the processing of his claim until July 22, 1955, when the formal claim was filed. On the basis of these facts of this particular case, this committee has concluded that Mr. Stoermer should be permitted to file his claim and have it considered on its merits in accordance with the other provisions of the Employees' Compensation Act.

The committee notes that in its opposition to the bill, the Department of Labor states as follows:

The 1955 claim was not filed within the 1-year time limitation provision in the Federal Employees' Compensation Act. However, under section 20 of the statute this time limitation may be administratively extended to 5 years if the Secretary of Labor finds that (1) the delay in filing was due to circumstances beyond the control of the claimant or (2) the claimant has shown sufficient cause or reason in explanation of his failure to file within the 1-year limit. In this case, the Bureau of Employees' Compensation of this Department concluded that neither of these findings could be made, and the claim was accordingly rejected. However, benefits for total disability on account of a recurrence of the 1946 injury were continued.

The claimant appealed to the Employees' Compensation Appeals Board for review of the Bureau's decision. The Board, in a decision dated May 28, 1957, affirmed the rejection of the 1955 claim.

This case is within the scope of the above-mentioned statutory provision permitting waiver of the 1-year limitation where a proper showing is made. However, both the Bureau of Employees' Compensation and the Employees' Compensation Appeals Board have determined that the claimant failed to make the required showing. Therefore, the enactment of this bill would, in effect, be a congressional reversal of these administrative determinations. If the claimant is able in the future to produce evidence showing the necessary extenuating circumstances, he may present it to the Bureau in support of a request for reconsideration of the rejection of his claim. For these reasons, and since H.R. 9711 would provide preferential treatment for the claimant as compared with persons similarly situated, we are opposed to the enactment of this bill.

As pointed out by the Department of Labor, the enactment of this bill would, in effect, be a congressional reversal of the administrative determinations which, in turn, would allow the claimant to file his claim for injuries with the Bureau of Employees' Compensation. It is noted, however, from the House report, as hereinbefore set forth, that the House of Representatives in its judgment believed that there was sufficient evidence presented to the Committee on the Judiciary of that body to justify the conclusion reached that this is a case which merits the waiver provided for in H.R. 9711. That committee states that the claimant is a man of limited education; that he relies heavily upon his superiors to protect his rights as to compensation; that he understood he had to exhaust his sick and annual leave before he could file the necessary claim, and that he was notified by the superintendent to come to Fort Eustis to sign the necessary papers. The House report further states that he was assured that the proper steps would be taken to see that the compensation would be properly computed; that he was given to understand that he was entitled to disability compensation based on the rate of pay he was receiving at the time of his last injury; that the superintendent in charge died a few days after talking with the claimant in September of 1951, and that nothing further was done about the processing of his claim until July 22, 1955.

On the basis of all of the foregoing, the committee is inclined to accept the recommendation and action of the House of Representatives on this claim, and recommends that the bill, H.R. 9711, be considered favorably.

Attached hereto and made a part hereof are the reports submitted by the Department of the Army and the Department of Labor on H.R. 9711.

DEPARTMENT OF THE ARMY,
Washington, D.C., March 30, 1960.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H.R. 9711, 86th Congress, a bill for the relief of Robert L. Stoermer.

This bill provides as follows:

"That sections 15 through 20, inclusive, of the Federal Employees' Compensation Act, are hereby waived in favor of Robert L. Stoermer, Hudgins, Virginia, and his claim for compensation and disability benefits arising out of an injury to his back alleged to have been sustained by him on May 17, 1951, while employed at Fort Eustis, Virginia, shall be acted upon under the remaining provisions of such Act if he files such claim with the Bureau of Employees' Compensation, Department of Labor, within the six-month period beginning on the date of enactment of this Act. No benefits, other than medical and hospital expenses, shall accrue to the said Robert L. Stoermer by reason of the enactment of this Act for any period before the date of its enactment."

The Department of the Army has considered the above-mentioned bill. Records of the Department of the Army show that Robert L. Stoermer was born on September 2, 1897, at Hudgins, Va. On May 7, 1941, he was transferred from the U.S. Maritime Commission, James River Fleet, Lee Hall, Va., to the Quartermaster Corps, Fort Eustis, Va., and employed as an "engineer mechanic, helper, CU-6" at a salary of \$1,680 per annum. During the course of his employment he received promotions, eventually becoming a "laundry-equipment repairer," receiving \$1.98 an hour, at the time he was separated for physical disability on December 11, 1951. Army records reveal that Mr. Stoermer reported the following injuries received in the course of his employment at Fort Eustis from 1941 through 1951:

- May 22, 1944, a bruised right elbow;
- June 28, 1945, an injury to his left knee;
- September 26, 1946, a back injury;
- May 9, 1950, a bruised left foot; and
- March 20, 1951, a fractured rib.

As a result of the back injury of September 26, 1946, Mr. Stoermer underwent surgery for a spinal fusion and removal of the ruptured intervertebral disk on November 7, 1949. On May 17, 1951, he again injured his back while moving some machinery, but he did not file an accident report of this incident until July 22, 1955. He was examined later in 1951, at the Norfolk Hospital, but apparently did not mention the May 17, 1951, accident. The hospital staff concluded that he was totally and permanently disabled, attributing half of the disability to nonemployment osteoarthritis and the other half to residuals of his 1946 injury.

The Bureau of Employees' Compensation awarded benefits for total loss of wage-earning capacity, basing payments upon claimant's 1946 wage rate which was lower than his wage rate in 1951. On July 5, 1956, the Bureau of Employees' Compensation held that a claim for compensation based on the May 17, 1951, injury was not timely filed as required by law and that the provisions of the Federal Employees' Compensation Act (39 Stat. 747) as amended (5 U.S.C. 770), under which waiver for failure to file timely could be authorized under certain circumstances, did not permit such a waiver in this case. On February 5, 1957, a hearing was held before the Employees' Compensation Appeals Board of the Department of Labor, and on May 28, 1957, that Board affirmed the Bureau's denial of waiver, holding that "No sufficient cause or reason for waiver has been established." However, the Board held that Mr. Stoermer's failure to timely file his claim would not per se bar him from medical benefits for the effects of the 1951 injury if his immediate superior had actual knowledge of that injury, and remanded that aspect of the case for appropriate action by the Bureau.

The Federal Employees' Compensation Act (39 Stat. 749), as amended (5 U.S.C. 787), provides pertinently that:

"* * * In the absence of fraud or mistake in mathematical calculation, the finding of facts in, and the decision of the Secretary upon, the merits of any claim presented under or authorized by sections 751-756, 757-781, 783-791 and 793 of this title if supported by competent

evidence shall not be subject to review by any other administrative or accounting officer, employee, or agent of the United States. * * *."

In view of this provision of law it would appear that any determination as to whether the statute of limitations should be disregarded in this case is a matter properly within the exclusive jurisdiction of the Secretary of Labor and his designated representative in such matters, the Bureau of Employees' Compensation. Accordingly, the Department of the Army expresses no views concerning the merits of this bill.

The cost of this bill, if enacted, cannot be determined by this Department.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, February 19, 1960.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
U.S. House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN CELLER: This is in reply to your recent request for a report on H.R. 9711, a bill for the relief of Robert L. Stoerner.

H.R. 9711 would waive the time limitations for notice of injury and filing claim for disability benefits under the Federal Employees' Compensation Act in favor of Robert L. Stoerner, who is alleged to have suffered an injury on May 17, 1951, while at work as a civilian employee of the Army at Fort Eustis, Va. Under the terms of the bill, claim would have to be filed within 6 months from the date of enactment and no benefits other than medical and hospital expenses would accrue for any period prior to such date.

The claimant in this case suffered an injury to his back on September 26, 1946, while employed as a painter at Fort Eustis. This injury caused intermittent periods of disability to February 27, 1950, and compensation under the Federal Employees' Compensation Act was paid for periods during which the employee lost pay due to such disability. The injury was diagnosed as a ruptured intervertebral disk for which surgery, including a lumbosacral fusion resulting in some residual permanent impairment, was performed on November 7, 1949. The employee was able to return to light work on February 27, 1950, and continued in such employment without wage loss until June 1, 1951, when he was forced to stop work because of his disability and compensation was reinstated for total disability. The claimant is now receiving payments of \$34.80 per week, representing 75 percent of his pay at the time of his injury in 1946. This is the maximum compensation allowable for the 1946 injury.

On July 22, 1955, the claimant filed notice of injury and claim for compensation alleging that a new injury sustained on May 17, 1951, aggravated his back condition and was responsible for his disability commencing June 1, 1951. He sought compensation based on his rate of pay in 1951, which was greater than the pay received at the

time of the 1946 injury upon which compensation is presently being paid.

The 1955 claim was not filed within the 1-year time limitation provision in the Federal Employees' Compensation Act. However, under section 20 of the statute this time limitation may be administratively extended to 5 years if the Secretary of Labor finds that (1) the delay in filing was due to circumstances beyond the control of the claimant or (2) the claimant has shown sufficient cause or reason in explanation of his failure to file within the 1-year limit. In this case, the Bureau of Employees' Compensation of this Department concluded that neither of these findings could be made, and the claim was accordingly rejected. However, benefits for total disability on account of a recurrence of the 1946 injury were continued.

The claimant appealed to the Employees' Compensation Appeals Board for review of the Bureau's decision. The Board, in a decision dated May 28, 1957, affirmed the rejection of the 1955 claim.

This case is within the scope of the above-mentioned statutory provision permitting waiver of the 1-year limitation where a proper showing is made. However, both the Bureau of Employees' Compensation and the Employees' Compensation Appeals Board have determined that the claimant failed to make the required showing. Therefore, the enactment of this bill would, in effect, be a congressional reversal of these administrative determinations. If the claimant is able in the future to produce evidence showing the necessary extenuating circumstances, he may present it to the Bureau in support of a request for reconsideration of the rejection of his claim. For these reasons, and since H.R. 9711 would provide preferential treatment for the claimant as compared with persons similarly situated, we are opposed to the enactment of this bill.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

JAMES T. O'CONNELL,
Acting Secretary of Labor.

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time of the 1948 injury upon which compensation is presently being paid. The 1948 claim was not filed within the 1-year time limitation provided in the Federal Employees' Compensation Act, 15 U.S.C. § 812, under section 20 of the Act. The time limitation may be extended only if the injury is shown to be compensable under the Act. (1) The injury in this case was not to an employee's body or to the employee's mind or (2) the claimant has shown sufficient cause or reason in explanation of his failure to file within the 1-year limit. In this case, the Bureau of Employees' Compensation of the Department of Health and Human Services could be made, and the claim was accordingly rejected. However, because of the fact that the claimant was not a member of the Federal Employees' Compensation Appeals Board for any of the Bureau's decisions. The Board's decision dated May 22, 1957, affirmed the rejection of the 1948 claim. This case is a denial of the scope of the above-mentioned statutory provision permitting waiver of the 1-year limitation where a proper showing is made. However, both the Bureau of Employees' Compensation and the Employees' Compensation Appeals Board have determined that the claimant failed to make the required showing. Therefore, the amendment of this bill would in effect have a substantial reversal of these administrative determinations. It is the intent of the bill to provide evidence showing the necessity of extending the time to provide evidence of the injury in support of a request for compensation of the rejection of the claim. For these reasons, and since H.R. 2711 would provide that a claimant for compensation as compared with persons similarly situated, be a member of the Board for any of the Bureau's decisions, the bill is opposed to the amendment of this bill.

The intent of the bill is that there is no objection to the deletion of this report.

Sincerely yours,

James T. O'Connor,
Acting Secretary of Labor.